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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,947	06/25/2003	W. Perry Dowst	65841-017 (WMST-003)	3129
20874	7590	01/06/2006		
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			EXAMINER PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/603,947

**Applicant(s)**

DOWST ET AL.

**Examiner**

CARL D. PRICE

**Art Unit**

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 106-160 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 106-160 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **Response to Arguments**

Applicant's arguments with respect to claims 106-160 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on **09/27/2005**. The scope of the claimed invention is now addressed in the following Examiner's action.

The amendment filed **09/27/2005** is objected to under 35 U.S.C. 132(a) is objected to under 35 U.S.C. 132(a), for the same reasons set forth in the last office action regarding the amendment filed **04/07/2005**. That is, the original disclosure does not support this particular manner of arriving at values resulting from this newly added "method of calculation". Nor, has applicant provided evidence to show this method of calculation is indeed known in the art. And, the resultant calculated values of "0548", "9.48", ".0548" and "8.62" respectively are not found in the original specification. See blow.

### **Claim Rejections - 35 USC § 112, the first paragraph**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Amendment Introduces New Matter**

The amendment filed **09/27/2005** is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

Notwithstanding applicant's statement that the method of calculation, added to paragraph [0096], ***"is well known in the art and should not be considered to be new matter"*** the original disclosure does not support this particular manner of arriving at values resulting from this newly added "method of calculation". Nor, has applicant provided evidence to show this method of calculation is indeed known in the art.

Also, while the values applied to the calculation added to paragraph [0096] appear to have support in the specification as originally filed the resultant calculated values of "0548", "9.48", ".0548" and "8.62" respectively are not found in any of the original specification, drawings or claims. Also, regarding claims 115, 126, 137 and 148 the specification does not support an aspect ratio which is in the "range of about 8.66- 9.48". As to any reliance on the drawing figures to support applicant's amendment to the specification, applicant is reminded that measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int 'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. "[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue."). However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art. In re Wright, 569 F.2d 1124, 193 USPQ 332 (CCPA 1977) ("We disagree with the Solicitor's conclusion, reached by a comparison of the relative dimensions of appellant's and Bauer's drawing figures, that Bauer clearly points to the use of a chime length of roughly 1/2 to 1 inch for a whiskey barrel.' This ignores the fact that Bauer does not disclose that his drawings are to scale. ... However, we agree with the Solicitor that Bauer's teaching that whiskey losses are influenced by the distance the liquor needs to traverse the pores of the wood' (albeit in reference to the thickness of the barrelhead)" would

have suggested the desirability of an increased chime length to one of ordinary skill in the art bent on further reducing whiskey losses." 569 F.2d at 1127, 193 USPQ at 335-36.)

Applicant is required to cancel the new matter in the reply to this Office Action.

**35 U.S.C. 112, second paragraph**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**35 U.S.C. 112: Claims 106-128, 134-137 and 145-148**

Claims 115, 126, 137 and 148 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "an aspect ratio" causes claims to be vague and indefinite since applicant has not defined which dimensions of portions, or aspects, of the plate intended be calculated as a ratio.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 129 and 140: Rejected under 35 U.S.C. 102(b)**

Claims 129 and 140 are rejected under 35 U.S.C. 102(b) as being anticipated by **DE 33 10 892** (newly cited).

**DE 33 10 892** shows and discloses a system for heating a substance, the system comprising:

- a vessel (1, 9) having enclosed sides, a thermally conductive bottom end and a top end forming covered opening for the introduction and extraction of the substance, the bottom end having an external bottom side having a central area (see figure 4) for receiving heat;
- a series of integrally connected, thermally conductive protrusions (15) fixedly secured to and positioned adjacent to and along the entire extent of a peripheral edge of the external bottom side, the protrusions extend from the vessel external bottom side and define with the central area a cavity with a fixed diameter;
- a heater comprising a gas burner heat source having a heat outlet header disposed below the cavity and configured to deliver heat to the cavity; said header being generally; and
- wherein the heat outlet burner header is round in shape and having a diameter that is less than the diameter of the central area defined by the protrusions.

**Claims 151- 155: Rejected under 35 U.S.C. 102(b)**

Claims 151-155 are rejected under 35 U.S.C. 102(b) as being anticipated by **DE 33 10 892** (newly cited).

**FR 2 446 097** shows a portable heating system comprising:

- a vessel (11);
- a top housing (12) having a top rim (above 12b) coupled circumferentially to the external bottom side of the vessel (see annular

- bottom wall step adjacent 12b), a side structure extending downwardly from the top rim and having a plurality of exhaust vents (12b) formed therein, and a bottom rim (12a);
- a bottom housing (14) having a top rim configured to be selectively coupled (via members (10)) to the top housing bottom rim (12a) and containing a burner (1) having a heat outlet head disposed below the external bottom side of the vessel when the bottom housing is coupled to the top housing, the bottom housing further having a plurality of air inlet vents (14a) formed therein;
- wherein the bottom housing is so configured and sized as to be removable from said top housing and temporarily placed for storage in the vessel cavity (see figure 5).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 106-150: rejected under 35 U.S.C. 103(a)**

Claims 106-150 are rejected under 35 U.S.C. 103(a) as being unpatentable over US000132793 (BARNES) (of record) in view of US004643164 (LaForge) (of record), JP 08-49856 (newly cited), DE 33 10 892 (newly cited) and US002213376 (BENESH) (of record).

**US000132793 (BARNES)** shows and discloses a system for heating a substance comprising:

- a vessel (not shown) with an external bottom surface having attached to a ring shaped single thermally conductive member (h) formed with a plurality of interconnected undulating protrusions (see figure 2);
- a top housing side structure (i) which includes a top rim (not referenced);
- a burner outlet head (g) having a diameter not greater than an inner diameter of the ring shaped thermally conductive member (h); and
- a plurality of air inlet vents (b') in a bottom housing encasing the burner and wherein the bottom housing is configured (via (j')) to couple with a bottom rim (not reference) of the top housing (i).

**US000132793 (BARNES)** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- exhaust vents in the top housing side structure;
- the top housing upper rim and the thermally conductive ring being "fixedly" attached to the top housing; and
- a bottom housing encasing the burner and configured to couple with the bottom rim of top housing.

**US004643164 (LaForge)** teaches, from the same vessel heating field of endeavor as **US000132793 (BARNES)**, providing a skirt (12, 14) with a series of air (21) and exhaust vents (54); and a base (12) configured to substantially encase the heat source and a baffle plate (24) having air passages and located below the burner. The skirt is separable from the base and the base is storable within the vessel.

**JP 08-49856** teaches, from the same vessel heating field of endeavor as **US000132793 (BARNES)**, providing a vessel with an upper skirt (2) having a series of



exhaust vents (10) located about a thermally conductive member having interconnected undulating portions (coil 3a);

**DE 33 10 892** shows and discloses a system for heating a substance, the system comprising:

- a vessel (1, 9) having enclosed sides, a thermally conductive bottom end and a top end forming covered opening for the introduction and extraction of the substance, the bottom end having an external bottom side having a central area (see figure 4) for receiving heat;
- a series of integrally connected, thermally conductive protrusions (15) fixedly secured to and positioned adjacent to and along the entire extent of a peripheral edge of the external bottom side, the protrusions extend from the vessel external bottom side and define with the central area a cavity with a fixed diameter;
- a heater comprising a gas burner heat source having a heat outlet header disposed below the cavity and configured to deliver heat to the cavity; said header being generally; and
- wherein the heat outlet burner header is round in shape and having a diameter that is less than the diameter of the central area defined by the protrusions.

**US002213376 (BENESH)** teaches, from the same vessel heating field of endeavor as **US000132793 (BARNES)**, fixedly attaching a single (i.e. – the thermally conductive elements are formed as a single unit) top housing side structure (8) and thermally conductive member (4, 10, 19, etc.) to a vessel bottom wall (2).

In regard to claims 106 -150, for the purpose of making the base readily separable from the base and the base is storable within the vessel and to increase the thermal heat efficiency by

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confining the flow to heat about the vessel bottom, it would have been obvious to a person having ordinary skill in the art to modify **US000132793 (BARNES)** to include exhaust vents in the top housing side structure, in view of the teaching of **US004643164 (LaForge)**, and **JP 08-49856**. And, it would have been obvious to a person having ordinary skill in the art to modify **US000132793 (BARNES)** to include exhaust vents in the top housing side structure form the top housing upper rim to be attached to the vessel, and the bottom housing configured to couple with the bottom rim of top housing, in view of the teaching of **US004643164 (LaForge)**. And, for the purpose of increasing the thermal heat transfer of the thermal transfer member, it would have been obvious to a person having ordinary skill in the art to further modify **US000132793 (BARNES)** by “fixedly” or integrally attaching the thermal conductive member to a vessel, in view of the teaching of **DE 33 10 892** or **US002213376 (BENESH)**.

In regard to claims 107-116, 119-128, 131-139, 141-145, since shape of the protrusions the manner of coupling (e.g. – soldering, brazing, gluing, etc.), the height of the vessel, length of the protrusions, aspect ratio of the protrusions, etc. would depend on numerous design concerns such as the overall size and shape of both the burner and vessel, the type of substance being heat, the amount of heat intended to be transferred to the substance through the vessel wall, etc., to configure the protrusions to have dimensions and to be attached in the manner set forth in the claims, can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced there from over the prior art of record.

**Claims 156-160: Rejected under 35 U.S.C. 102**

Claims 156-160 are rejected under 35 U.S.C. 103(a) as being unpatentable over **FR 2 446 097** (newly cited).

**FR 2 446 097** shows and discloses the invention substantially as set forth in the claims with possible exception to:

- an igniter portion disposed above the burner and a recess or indentation in the cover (15) for receiving or accommodate the extending igniter portion; and
- friction or slot and dimple attachment means for the upper and lower housings.

Official Notice is taken that it is well known to place igniters above, that is, downstream of fuel exiting burner heads as a recognized optimal location to effect ignition of the fuel. Thus, in view of that which is well known, it would have been obvious to a person having ordinary skill in the art to provide **FR 2 446 097** with such an igniter arrangement. Regarding any necessary recess or indentation in the cover (15) for receiving or accommodate the extending igniter portion it is noted that the cover of **FR 2 446 097** is formed with such a recess (at "15"; figure 5) capable of performing this function. In regard to claims 159 and 160, Official Notice is taken that burner components are known to be secured by slot and dimple attachment means for (see for example US004374489). Thus, it would have been obvious to a person having ordinary skill in the art to modify attachment of the upper and lower housings in **FR 2 446 097** to include such well known securing means.

### **Conclusion**

See the attached PTO FORM for prior art made of record that is not relied upon, which is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

**USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CARL D. PRICE

Primary Examiner

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